IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL APPLICATION NO.7718 OF 2005

Shri Kedar Jagannath Acharya ...Applicant.
V/s.
Shri Mohsin Yasin Momin ...Respondent.

Shri G.H.Keluskar i/b Mr.Narayan Iyer & S.R.Mothare, advs. for the Applicant.
Shri S.R.Shinde APP for the Respondent/State.

CORAM: J.H.BHATIA, J.
DATE : 5th June, 2007.

P.C.:

1. Heard Mr.G.H.Keluskar the learned counsel for the applicant. The applicant, who is original complainant, seeks leave to prefer appeal against the order of acquittal for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. To state in brief, it is the case of the petitioner that he had sold synthetic yarn to the respondent and for payment of the dues, the respondent had issued a cheque of Rs.50,000/- in favour of the petitioner on 3-1-99. The cheque was presented to Nagarik Co-operative Bank firstly on 9th June, 1999 but it was dishonoured for want of sufficient funds. It was presented on 15th June, 1999 again and was dishonoured with similar remarks. Thereafter he presented the

cheque third time on 2nd July, 1999 and the cheque was dishonoured again. On 16-7-99 the complainant issued a notice to the respondent, which was received by him on 21-7-99. In spite of that he did not make the payment and, therefore, on 21-8-99 a complaint was filed under Section 138 of the N.I.A.

3. After the trial, the learned trial Court acquitted the respondent observing that not only in several bills about supply of goods but in the cheque also there was overwriting and alteration. It was noted that cheque was actually dated 18th December, 1998 and therefore, it could be presented to the bank for encashment on or before 18-6-1999. Cheque was presented on 2-7-1999 that is beyond the period of six months being the period of validity of the cheque. To bring the cheque within limitation the date "18-12-1998" on the cheque was altered as "3-1-1999". Alteration was neither initialled by the respondent nor there was any evidence that alteration or change in the date was made with consent of the respondent. As per the banking rules, nobody is expected to make alteration in the cheque and if it becomes necessary, alteration must be duly signed by the drawer of the cheque. In view of this, the learned trial Court found that when the cheque was presented on 2-7-1999 it was beyond it’s validity

period and besides the other ground, on this ground itself the accused/responsent was entitled to be acquitted.

4. After careful perusal of the contents of the complaint and the judgment passed by the trial Court, I find no fault in the order of acquittal. I see no justification to grant leave to prefer appeal.

5. Leave refused. Application stands rejected.

(J.H.Bhatia,J.)